TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1910.

No. [redacted] 92.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, AND THE STATE TAX COLLECTOR FOR THE FIRST DISTRICT OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

(21,398)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 282.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS, THE CITY OF NEW ORLEANS, AND THE STATE TAX COLLECTOR FOR THE FIRST DISTRICT OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 31, 1909.

a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

No. 16690.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY, Plaintiff, in Error,
versus
BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS and Others, Defendants in Error.

Harry H. Hall, and J. Blanc Monroe, for Plaintiff in Error.
F. C. Zacharie, George H. Terriberry, and H. Garland Dupre, for Defendants in Error.

Writ of Error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the City of Washington, D. C., within thirty days (30) from the thirteenth day of October, A. D. 1908.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

No. 79725.

Civil District Court, Division "A."

LIVERPOOL & LONDON AND GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et als.

Detailed List of all Docket Entries, in Chronological Order, from Docket No. Five, in the Above Entitled and Numbered Cause, from the 25th Day of June, 1906 (the Date of the Filing of the Original Petition), to the 24th Day of May, 1907, the Date of the Filing of the Appeal Bond, Inclusive.

1906.
Jun. 25. Petition.
25. 3 copies petition & 3 citations.
26. Answer of Board of Assessors.
27. Answer of Tax Collector.
27. Return to citations (3).
Jul. 19. Answer of City of New Orleans.
Oct. 18. Supplemental Answer & Order.

2

Oct. 23. Continued.
Nov. 7. Continued.
21. Continued.
Dec. 4. 1 Subpœna.
4. Motion for subpœna deces tecum & copies.
5. Continued.
6. Return to writ subpœna deces tecum.
19. Continued.

Received January 2nd, 1907, from Mes-rs. Hall & Monroe, Attorneys for petitioners Check for $60.00 as a deposit herein.—See order this day.

Dec. 31. 2 subpœnas (Hall).

1907.

Jan. 2. Motion to deposit.
2. Continued.
16. Continued.
30. Continued.
Feb. 13. Continued.
27. Argument continued to March 3, 1907.
Mch. 13. Continued.
27. Continued.
Apl. 10. Continued.
24. Filing testimony & duplicate.
24. Submitted.
May 17. Judgment.
22. Argument continued May 30, 1907.
23. Judgment signed.
24. Motion of appeal & bond.

3 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et als.

Petition.

Filed June 25th, 1906.

Civil District Court, Division "A."

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

The petition of the Liverpool & London & Globe Insurance Company, of New York, a New York Corporation domiciled in New

York, N. Y., having no domicile in this State, whereof H. W. Eaton is President, with respect represents:

That the Board of Assessors for the Parish of Orleans has levied against your petitioner for the year 1906 the following assessment:

"Liverpool & London & Globe Insurance Company of New York."

"Money loaned on interest; all credits and bills receivable for money loaned on interest, or advanced or for goods sold $112,000.00."

4 Now, your petitioner avers that it has not in the City of New Orleans, nor has it, at any time during the present year, had any money loaned on *earnest*, nor any credits or bills receivable for money loaned on interest or advanced, or for goods sold.

And your petitioner avers that by said assessment the said Board of Assessors are attempting to levy and to cause to be levied a tax upon such premises due under open account as may result from the issuance of petitioner's policies of insurance.

Your petitioner avers that this assessment is illegal, null and void and unconstitutional, among other reasons for the following, to-wit:

First. The attempted assessment is only made upon the gross receipts or premiums of foreign insurance companies, and that an assessment thus made and a tax thus levied upon class only violates the mandate of the Louisiana Constitution, that all property shall be taxed in proportion to its value.

Second. A tax upon the gross receipts of Insurance Companies is an income tax, the imposition of which has not been authorized by the Legislature of the State; nor is it within its legislative power to levy such tax on only one class of tax payers while exempting all others. Nor have the assessors any greater power than the Legislature.

Third. Premiums due on open account to a foreign corporation cannot be taxed. The Legislature has not the power to localize an abstract credit away from the domicile of the creditor, the State's power of taxation being limited to persons, property or business within its jurisdiction.

Fourth. The levying of a tax upon incorporal things, such as abstract credits, not in so-called "*concrete*" form and without tangible shape violates the fourteenth Amendment of the United States Constitution.

Fifth. The Revenue Acts of Louisiana do not purport or pretend to authorize the assessment or the levy of a tax upon premi-

5 iums due to Foreign Insurance Companies, under open unliquidated accounts.

Sixth. The Constitution of Louisiana prohibits the collection of taxes by suit, and in as much as such open accounts cannot be seized for taxes and could only be collected by suit, such suit and such collection would violate said Constitution, Article 232.

Wherefore your petitioner prays that the Board of Assessors for the Parish of Orleans, the City of New Orleans and the State Tax Collector for the First District be cited to appear and answer this

proceeding; and that, after due proceedings had, the above described assessment and the taxes levied thereon be declared to be illegal, unconstitutional and null and that the same be ordered to be cancelled from the assessment rolls and for all general and equitable relief.

N. O. June 21st, 1906.

(Signed) HARRY H. HALL, *Att'y.*

Citation.

Issued June 25, 1906.

Sheriff's Return Thereon.

Filed June 26, 1906.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans in the City of New Orleans.

No. 79725.

LIVERPOOL AND LONDON AND GLOBE INSURANCE CO.
versus
BOARD OF ASSESSORS et als.

To the Board of Assessors for the Parish of Orleans, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation, or deliver your answer to the same, in the Office of the Clerk of the Civil District Court for the Parish of Orleans, within two days after the service thereof.

Witness the Honorable T. C. W. Ellis, Fred D. King, George H. Theard, John St. Paul, W. B. Sommerville, Judges of the said Court, this 25th day of June in the year of Our Lord 1906.

6 [SEAL.] (Signed) J. McCORMICK,
Deputy Clerk.

Court house—Opposite Jackson Square.

Received Monday June 25th, 1906 and on the 26th day of June 1906, I served a copy of the within citation and accompanying petition on the Board of Assessors for the Parish of Orleans, Defendant herein by personal service on C. Taylor Gauche, its President.

Returned same day.

(Signed) GEO. J. MARIN,
Deputy Sheriff.

Sheriff's fees $1.50.

Citation.

Issued June 25th, 1906.

Sheriff's Return Thereon.

Filed June 26th, 1906.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans in the City of New Orleans.

No. 79725.

LIVERPOOL AND LONDON AND GLOBE INSURANCE CO.
versus
BOARD OF ASSESSORS et als.

To the City of New Orleans through its proper Officer—New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation, or deliver your answer to the same, in the Office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service thereof.

Witness the Honorables T. C. W. Ellis, Fred. D. King, Geo. H. Theard, John St. Paul, W. B. Sommerville, Judges of the said Court, this 25th day of June in the year of Our Lord 1906.

7 [SEAL.] (Signed) J. McCORMICK,
Deputy Clerk.

Court House, opposite Jackson Square.

Received Monday June 25th, 1906, and on the 26th day of June 1906, I served a copy of the within citation and accompanying petition on the City of New Orleans defendant herein by personal service on Honorable Martin Behrman, its Mayor.

Returned same day.
(Signed) GEORGE J. MARIN,
Deputy Sheriff.

Sheriff's fees $1.50.

Citation.

Issued June 25th, 1906.

Sheriff's Return Thereon.

Filed June 26th, 1906.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans in the City of New Orleans.

No. 79725.

LIVERPOOL AND LONDON AND GLOBE INSURANCE CO.
versus
BOARD OF ASSESSORS et als.

To the State Tax Collector for the First District of the City of New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which — accompanies this citation or deliver your answer to the same, in the Office of the Clerk of the Civil District Court for the Parish of Orleans, within ten days after the service thereof.

Witness the Honorables, T. C. W. Ellis, Fred D. King, George H. Theard, John St. Paul, W. B. Sommerville, Judges of the said Court, this 25th day of June in the year of Our Lord 1906.

8 [SEAL.] (Signed) J. McCORMICK,
Deputy Clerk.

Court house, opposite Jackson Square.

Received Monday June 25th, 1906, and on the 26th day of June 1906, I served a copy of the within citation and accompanying petition on the State Tax Collector for the First District of the City of New Orleans defendant herein by leaving the same at his office No. 630 Commercial Alley in the hands of John A. Letten, Chief Clerk, John Fitzpatrick, State Tax Collector being absent from his office at time of said service.

Returned same day.

(Signed) GEO. J. MARIN,
Deputy Sheriff.

Sheriff's fees $1.50.

Answer of Board of Assessors.

Civil District Court, Parish of Orleans.

No. 79725, Div. "A."

LIVERPOOL AND LONDON AND GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et als.

Now into Court, through its undersigned counsel, comes the Board of Assessors, made defendant in the above entitled and numbered cause, and for answer to plaintiff's petition, denies all and singular the allegations therein contained.

Wherefore, it prays to be hence dismissed with costs, and for general relief.

(Signed) GEO. H. TERRIBERRY,
Attorney for Board of Assessors.

9 *Answer of Tax Collector.*

Filed June 27th, 1906.

Parish of Orleans, Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et als.

To the Honorable the Judges of the Civil District Court for the Parish of Orleans:

Now comes the State Tax Collector, by his undersigned attorney made defendant herein, and for answer to plaintiff's demand denies all and singular the allegations in plaintiff's petition contained and prays that the demand therein set forth be dismissed at plaintiff's cost, and further prays that he have judgment for (10%) ten per centum Attorney's fees, on the aggregate amount of the Tax and penalties herein involved until paid, or so much thereof as may be named by this Honorable Court and for all general and equitable relief.

(Signed) F. C. ZACHARIE,
Att'y for Board of Assessors and Tax Collector.

Answer of City of New Orleans.

Filed July 19, 1906.

Civil District Court, Parish of Orleans, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et als.

Now into Court comes through its undersigned counsel, the City of New Orleans, made defendant herein; and for answer to plaintiff's petition, denied all and singular the allegations thereof.

Wherefore respondent prays that plaintiff's demand be dismissed for costs, and for general relief.

(Signed) JNO. F. C. WALDO,
Ass't City Att'y.

Supplemental & Amended Answer of the City of New Orleans & Order.

Filed October 18, 1905.

Division "A," Civil District Court.

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et al.

Now into Court comes the City of New Orleans, made one of the defendants herein, and for supplemental and amended answer to plaintiff's petition (leave of the Court first obtained), renews the general denial heretofore filed.

Further answer- this defendant admits that the plaintiff corporation is a non-resident corporation, but shows that it is engaged in business in this State and has an office in the City of New Orleans, for the transaction of such business.

Further answering this defendant shows that the assessments herein assailed are levied only upon the business conducted by said corporation in this City and State, where it is engaged in competition with those residents of the State of Louisiana who conduct same and are subject to similar assessments; that said assessment is not only just, fair and equitable, but is levied in obedience to the plain statute of the State of Louisiana, (Section 7, Act 170 of 1898) which declared that it is the intent and purpose of the law of Louisiana

"that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a
11 corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State and at the business domicile of said non-resident, his agent or representative.

Wherefore defendant prays that the plaintiff's demand be rejected, and its suit dismissed, at its cost.

(Signed) H. G. DUPRE,
Assistant City Attorney.

Order.

Let this supplemental and amended answer be filed. New Orleans, La., October 18, 1906.

(Signed) GEO. H. THEARD,
Judge Civil District Court for the Parish of Orleans, Div. "E," Acting for the Honorable T. C. W. Ellis, Judge of Div. "A," now Absent.

Motion for Subpœna Duces Tecum.

Filed December 4th, 1906.

Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO. OF NEW YORK
vs.
BOARD OF ASSESSORS.

On motion of Hall & Monroe, Counsel for Plaintiff and on suggesting the annexed affidavit

It is ordered that a subpœna duces tecum issue herein, addressed to the Board of Assessors for the Parish of Orleans commanding them to produce in open Court on the trial of this cause on Wednesday, December 5th, 1906, or at any other day to which the
12 said cause may be assigned or continues, "The assessment rolls for this Parish for 1906."

Clarence F. Low being sworn, says that he is the General Agent of the plaintiff Company and that the said plaintiff expects to prove by said assessment rolls that no assessment for open accounts has been made during the year 1906, either against any local Insurance Company of this City, nor against any domestic corporation or against any individual residing in or conducting business in this Parish.

(Signed) CLARENCE F. LOW.

Sworn to and subscribed before me, this 3rd day of December 1906.

[SEAL.] (Signed) F. J. DREYFOUS.

Writ of Subpœna Duces Tecum.

Issued December 4th, 1906.

Sheriff's Return Thereon.

Filed December 6, 1906.

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY
versus
BOARD OF ASSESSORS.

The State of Louisiana to the Board of Assessors for the Parish of Orleans, Greeting:

You are hereby commanded, in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans to produce in open Court on 5th day of December 1906 at 11 o'clock A. M. or any other day which this case may be continued, the following, to-wit:

The Assessment rolls for this Parish for 1906. And herein fail not under penalty of the law.

Witness the Honorable T. C. W. Ellis, Judge of our said Court, Division "A" this 4th day of December in the year of our Lord, one thousand nine hundred and six.

13 [SEAL.] (Signed) H. MESSONIER,
Deputy Clerk.

Received Tuesday December 4, 1906 and on the 4th day of December 1906, I served a copy of the within Subpœna Duces Tecum on the Board of Assessors for the Parish of Orleans, defendant herein, by leaving the same at its office Room No. 15 City Hall in the hands of John C. Sounders, Assistant Secretary. The President and other Superior Officers being absent from their office at time of said service.

(Signed) G. A. PUTFARK,
Deputy Sheriff.

Returned same day.
Sheriff's fees.

Motion to Deposit.

Filed January 2nd, 1907.

Civil District Court, Parish of Orleans, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO. OF NEW YORK
vs.
THE BOARD OF ASSESSORS et al.

And now into Court comes the plaintiff and asks to be permitted to deposit in the Registry of the Court, the sum of $60.00 being the State Tax for 1906 upon the assessment against petitioner of:

"Money in possession..... $10,000.00."

This deposit to be made with the right to the State to withdraw the same and with the distinct understanding and stipulation that the State shall in no manner be prejudiced by accepting the same, the only purpose of this deposit being to save interest, penalties and costs upon the amount of the taxes admitted to be due.

Wherefore, plaintiff prays that it be authorized to make this deposit and for all general and equitable relief.

N. O. Dec. 27th. 1906.

(Signed) HALL & MONROE, *Att'ys.*

14 *Order.*

Let this deposit be made as prayed for without prejudice to the rights of any of the parties to this proceeding.

New Orleans, La., Jan'y 2, 1907.

(Signed) T. C. W. ELLIS, *Judge.*

Continued.

Extract from the Minutes Division "A." Wednesday, January 2nd, 1907.

Present Hon. T. C. W. Ellis, Judge.

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY OF NEW YORK
vs.
BOARD OF ASSESSORS et als.

This case came on for trial this day.

Present H. H. Hall Esq., att'y for plaintiff and Messrs. H. G. Dupre.

Geo. H. Terriberry & H. D. Sneed, att'ys for the defendants.

When after hearing pleadings and evidence, the case was continued for argument to Wednesday, January 16th, 1907.

Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et al.

Testimony and Notes of Evidence Taken in Open Court, before the Hon. T. C. W. Ellis, Judge Presiding, on the 2nd Day of January, A. D. 1907, on Behalf of Plaintiff.

Appearances:

For the plaintiff, Harry H. Hall, Esq.

15 For the Board of Assessors, Geo. H. Terriberry, Esq.
For State Tax Collector, Messrs. F. C. Zacharie & H. P. Sneed.
For the City of New Orleans, H. Garland Dupre, Esq., Ass't City Atty.

Index.

Page

NOTE.—It is admitted by counsel for the plaintiff herein, that the Liverpool & London & Globe Insurance Co. of England is an English Corporation, domiciled in Liverpool, England, having a Board of Directors, and Managing Agent, and owning a building on Carondelet Street in this City. There is a Liverpool & London & Globe Insurance Co. of New York, a New York Corporation, organized under the laws of the State of New York, which is the company bringing this suit, and the two companies are distinct corporations, and there are two distinct assessments against the two corporations, on the Assessment Rolls of 1906.

By Mr. HALL: I offer, produce and file in evidence tax receipt of the City of New Orleans, for 1906 on personal property of the Liverpool & London & Globe Ins. Co. of New York, for $220.00, being an assessment on $10,000.00 "Money in Possession."

I offer in evidence petition, an order of Court filed herein, authorizing the payment of Sixty dollars, being the State tax on the same item, for the same year, the application being made, and
16 the order given, to the effect, that such payment should in no wise prejudice the parties to this suit, and the State might withdraw the same.

I offer in evidence the application made to the Board of Assessors by this Company, and request, if it be found in the office of the Board of Assessors, that it be produced.

Mr. THOS. H. ANDERSEN, being first duly sworn by the Minute Clerk:

By Mr. HALL: At the request of counsel for the City of New Orleans, I make the statement, that the item that is being contested, is set out in the petition. "Money Loaned On Interest or Advanced, or for goods sold, $112,000.00."

Direct examination by Mr. HALL:

Q. Mr. Andersen, under the laws of what State is the Liverpool & London & Globe Insurance Company of New York, plaintiff herein, organized?

A. State of New York.

Q. Where is its domicile?

A. The City of New York.

Q. Has it any office building in the City of New Orleans?

A. It has not.

Q. Has it any Board of Directors in the City of New Orleans

A. It has not.

Q. Who is its agent in the City of New Orleans, or representative; who is authorized to take risks in the State of Louisiana?

A. Mr. Clarence F. Low is the General Agent, Mr. J. G. Pepper, the Assistant General Agent, and I am the Deputy Assistant General Agent.

Q. Will you please state whether during the years 1905 or 1906 that corporation had any money at interest in the State of Louisiana?

A. It had none.

Q. Had it loaned any money in the State of Louisiana?

A. It had not.

17 Q. Had it any credits for money loaned, or money placed at interest, money loaned?

A. It had no money loaned.

Q. Had it any bills receivable for money loaned?

A. No bills receivable.

Q. Had it any for goods sold or money advanced?

A. No, we have not sold any goods or advanced any money.

Q. What were the entire premiums for the gross business of that company during the year 1905 in the entire State of Louisiana?

By Mr. DUPRE: May it please the Court, I object on behalf of my colleagues and myself, for the reason that this is a suit for the cancellation of the assessment. It is immaterial what was the total amount earned in the State during that year.

By the COURT: I will admit the evidence and transfer the objection to the merits.

To which ruling of the Court, Mr. Dupre excepts and reserves this note in lieu of a formal bill of exceptions.

By the WITNESS: The total returns for the Company in the State of Louisiana, during 1905, as sworn to before the State, was $15,563.36.

By Mr. HALL:

Q. Have your returns been made out yet for 1906?
A. No, they have not; our books are not closed.
Q. To the best of your knowledge and belief, will the premiums for 1906 be greater or less than for 1905?
A. From my observation, I think they will be slightly decreased, as compared with the previous year.
Q. Has this Company paid the Tax to the State?
A. Yes, sir, both to the State and the City.
Q. Has it ever been assessed for these items before, to your knowledge?
A. Not to my knowledge.
Q. You would know it if it had been, during your connection with the Company?
18 A. Yes, sir.
Q. Then you know it has not?
A. Since the organization of this Company I can say it has not because this company is only eleven years old.
Q. In view of the fact that no assessment had ever been made upon it before for premiums received, or outstanding credits, bills receivable, did you make any return on January 1st, 1906?
A. We did not, because we did not understand it was taxable, and we did not think we were required to make returns.
Q. You have made your returns upon specific property?
A. Yes, sir, paid our license; the Assessors always charge us more for cash in bank than we really had.
Q. The return as made by you shows the money in possession was $5,600.00?
A. Yes, sir.
Q. Yet I see you have paid the tax upon ten thousand?
A. Yes, sir.

Cross-examination by Mr. DUPRE:

Q. Mr. Andersen, how long has the Liverpool of New York been doing business in Louisiana?
A. I think since the first of January, 1896.
Q. How long has the Liverpool of England been doing business in Louisiana?
A. Oh, that goes back I know, since before the War, the Civil War.
Q. Have the two companies the same general agents here in Louisiana?
A. Their management is the same.
Q. They have their offices together?
A. Yes, sir.
Q. You are connected with both of them?
A. Oh, yes sir.
Q. What is the relationship between the two companies, Mr. Andersen?
A. The Liverpool & London & Globe of New York was organized

by the Liverpool & London & Globe of England in the State
19 of New York, for purposes best known to the management, one, I should judge it to be to take its straight name in this country, and they have been managed together, but separate corporations.

Q. The relations between the two corporations are very intimate then?

A. Oh, entirely so.

Q. In placing risks as your customers come in for them, you give them alternately, or have you any system in that regard?

A. We give entirely to the English Company.

Q. What is the business then of the New York Company?

A. If in placing their business, that is, if we have more than the English Company can take care of, we mark off a portion to the New York Company; then in New Orleans, the New York Company has its separate agent, consequently all business offered there, would be for the American Company.

Q. Then, Mr. Andersen, there are individual policy holders in New Orleans, holding policies in the New York Company?

A. Oh, a great many, sir.

Q. Who are the sub-agents of the New York Company in New Orleans?

A. Mehle and Kausler.

Q. The business is primarily done through them?

A. Yes, sir, in this City.

Q. Will you please state the method of doing business pursued by the Liverpool of New York and this State—Application is made to Mehle and Kausler; then what is the next step?

A. They either accept or reject the business, reporting to our office for final approval.

Q. They issue the policies?

A. Yes, sir.

Q. Who is payment of the premiums made to?

A. To Mehle and Kausler as our agents.

Q. How are premiums paid, in advance or not?

A. Well, they are sometimes not in advance; they are paid simultaneously on issue of the policy, but more generally on open
20 accounts, that is thirty and sixty days.

Q. The account as a rule runs from thirty to sixty days?

A. We require our agents to collect and remit the premiums to us within a given time.

Q. Remittances are made by Mehle and Kausler, to whom?

A. To Mr. Clarence F. Low, General Agent.

Q. In 1905, Mr. Anderson, there were policies issued in the State of Louisiana, and the City of New Orleans, by the Liverpool of New York; the premiums for which were not paid until after some thirty or sixty days elapsed?

A. I judge the great majority of them are that way, sir.

Q. And that was the method pursued during the year 1906?

A. Yes, sir.

Q. In other words, Mr. Anderson, insurance business is not necessarily a cash business, is it?

A. Oh no, not at all.

Q. If I am in fairly good financial standing and should want to go to Mehle and Kausler and get a policy in the Liverpool of New York, I could get such a policy and have thirty or sixty days in which to pay the premiums?

A. Yes, sir, just as you might buy a bill at Holmes, I guess.

Q. That was the custom pursued in 1904, 1905 & 1906—I don't think you said 1904?

A. No.

Q. But it includes 1904 as well?

A. Yes, sir, I should say so; we have been doing that way all the time.

Q. Do you know when it is sometimes the custom for the premiums due to be covered by note of the policy holders?

A. We don't permit that at all.

Q. Sir?

A. We don't permit that at all: we decline to receive a note for any premium whatever. There might have been in the
21 course of years one or two exceptions, by our agents, whom we have been compelled to stand by, but we always return the note and demand the money for the premium.

Q. Do you remember whether there were any such instances in 1905?

A. I am rather sure there were not. You understand I am speaking of our positive rule.

Q. Applying your rule to the Liverpool of New York, do you remember whether that company received any notes in 1905 for premiums due?

A. I can positively state they did not.

Q. The custom then, is to allow the credit to run thirty to sixty days?

A. That is the usual credit, but of course we have the right to call in our policy at any time.

Redirect examination by Mr. HALL:

Q. I understand from your answers, when a man takes out a policy, it is the custom to collect the premium within thirty or sixty days?

A. Yes, sir.

Q. That is the customary course pursued by all insurance companies?

A. Yes, sir.

Q. Within what time are these premiums generally paid? Thirty or sixty days?

A. We allow some of our agents sixty days credit; we don't go after them with a hot poker for it, but the majority of them settle in thirty days.

Q. Then at the end of 1905 there would have been collected all the—There would have remained uncollected from one-twelfth to one-sixth?

A. Yes, sir, I should say.

Q. And those premiums are always due under open account; you never take any acknowledgement of any kind for them?

A. None at all, except the evidence of the policy; they are never earned; five-sixths is unearned after sixty days, really doesn't belong to the Company.

22 By Mr. TERRIBERRY:

Q. I just want to ask you, Mr. Anderson, when you say the time arrives, in the case of some of these credits or open accounts, where you have to get after them with a whip, what do you do?

A. The agent has a fiduciary trust and we demand the agent to have it paid, and if not paid we cancel the policy.

Q. Do you ever bring suit?

A. Except on the insured himself, never the agent.

Q. That's what I mean.

A. We do that, but those cases have been very few.

Q. You are speaking of the Liverpool of New York?

A. I should say in regard to the Liverpool of New York, I do not recollect doing anything of that kind.

Q. Do you bring the suit here?

By Mr. HALL: Have you ever brought a suit for the Liverpool of New York for an uncollected premium?

A. No.

By Mr. TERRIBERRY:

Q. Suppose the man lived here?

By Mr. HALL: I object to that question.

By the WITNESS: We could only bring suit for the earned portion of the policy.

By Mr. TERRIBERRY:

Q. Now, Mr. Andersen, you have testified that the relations between this company and the other company are most intimate?

A. Very.

Q. That the Company of Liverpool organized this Company in New York?

A. And owns it stock.

Q. What is the custom of either of those companies, or both of them, with regard to collecting premiums and bringing suit

23 against people in the City of New Orleans?

By Mr. HALL: Have you brought any suit?

A. We have not that I can recollect; certainly not in those two years, because I have been very intimate with the company in that time. I cannot recollect in the past ten years that we have brought any suit for collection of premiums in the State of Louisiana.

By Mr. TERRIBERRY:

Q. For the entire state?

A. Yes, sir. When we cannot collect the premiums, we call in the policy, which we have a right to do, and, in the majority of cases,

the premium is entirely too small for us to go to the expense of a suit; we have the right at any time to take up the policy for non-payment, because on its face, it is a cash transaction. In a great many cases where we find a man cannot pay according to our rule, our agent takes it up with him, and we cancel the policy.

Q. Did you ever bring a suit on behalf of the Liverpool of New York to collect the premium on a policy in New Orleans, or in the State of Louisiana, at any place outside of the State of Louisiana?

A. Not in the history of that company have we brought a suit for the collection of a premium.

By Mr. DUPRE: Counsel for the defendants offer, introduce and file in evidence and will file in evidence certified copies of the Assessment Rolls for the year 1906, showing the assessments levied against the Sun Insurance Co.; the Teutonia Ins. Co.; and the Hibernia Insurance Co.

By Mr. HALL: In that same connection there, counsel for plaintiff offers in evidence the three (3) complete returns made by the Southern Insurance Co., the Teutonia Insurance Co., and the Sun Insurance Co.

NOTE.—It is agreed, in case of an appeal, the same may go up in evidence in the original.

24 Case closed and fixed for argument for January 16th 1907.

Reported by Chas. J. O'Shaughnessy, Steno.

25 *Tax Receipt of the City of New Orleans for* 1906 *on Personal Property of the Liverpool & London & Globe Insurance Company, Offered in Evidence by Counsel for Plaintiff.*

Filed June 11th, 1907.

No. 311, By.

City of New Orleans Tax of 1906 on Personal Property.

Received, June 22nd, 1906, of Liverpool & London & Globe Insurance Co. of Liverpool, England, sixty-nine 30/100 Dollars for tax as described below.

Assessment.		For what purpose.	Amount.
Horses, Cows, Etc.....			
Vehicles			
Merchandise or Stock in Trade.....		City Alimony, 10 Mills.....	
Money at Interest, Credits.....			
Bills receivable.....			
Money in possession	650		
Shares of Stock.....	.....	Interest and redemption, City Bonds under Sec. 7, of Act 110 of 1890, 10 Mills.	
Furniture, etc.....	2500		
Statuary Paintings, Etc.....			
Diamonds, Jewelry, Etc.....			
Stock or Interest in Water Craft	.....	Special Tax Voted June 6th, 1899, for Water Sewerage and Drainage, 2 Mills.	
Trackage Etc. of Railroad.....			
Machinery and all Motive Power			
Judgments, Suits, And Causes in Action.			
Franchises, Patents, Copyrights, Trade marks, Privileges, and Charters, all Canals, and other ways of Communication.....			
Bonds of all Kinds.....			
Total Taxable Personal Property.....	$3150	Total Rate of Tax, 22 Mills...	$69.30

26 BAPST MOHUR,
For Comptroller.

G. MORRILL,
For Treasurer.

Assessment district.	No. of square.	Where situated.	Amount.
5	224	206 Carondelet, C. F. Low, Ag't.....	

Filed June 11/07.

JOHN SLISA, *D'y Clerk.*

(Here follows copy of Assessment Rolls for the year 1906, marked page 27.)

28 *Three Complete Returns Made by the Southern Insurance Company, Offered in Evidence by Counsel for Plaintiff.*

Filed June 11th, 1907.

The Southern Insurance Company of New Orleans.

Office, New No. 314 Camp St.

AGENCY AT NEW ORLEANS, *January*, 1906.

In re *to* Assessment for 1906 of the Southern Insurance Company of New Orleans.

Schedule of Bonds and Stocks held and owned by the Southern Insurance Company, of New Orleans continuously for more than Six (6) Months, prior to the 31st of December, 1905, to-wit:

$215,000. City of New Orleans 4% Constitutional Bonds.
75,000. State of Louisiana 4% Bonds.
25,000. Lafourche District Levee Bonds.
One share Stock Louisiana Sugar Exchange.
All the above securities are non-assessable.

1906.
Southern Insurance Co.

	Assess.
Cash in Bank	$110,900.00/100
Premiums in course of collection 26423	26,400.00/100
1 Share Stock Sugar Exchange	75.00/100

Assess.

Cash in Bank	$110,900.00/100
Credits	26,400.00/100
1 Share Stock Sugar Exchange	75.00/100
Office Fixtures	500.00/100

(Here follows copy of Assessment List of the Southern Ins. Co., marked page 29.)

Office of The Tax Assess

ROOM

M _____

You are by law required to fill up the Statement below and make return to me wi
in default of which your property will b

ASSESSMENT LIST *of the taxable property of* Southern Insurance C

MILLER & BRANDAO, N. O.

NUMBER OF SQUARE	REAL ESTATE DESCRIPTION OF PROPERTY	WARD	STREET	NUMB
	NONE			

	MOVABLE PROPERTY	NUMB
	Horses, Mules, Goldcoast, Cattle, Sheep, Goats, Hogs, and all other Live Animals	None
	Carts, Carriages and Vehicles of all kinds	None
	Merchandise or Stock in Trade	None
	Money Loaned on Interest, all Credits and all Bills Receivable for Money Loaned or Advanced or Goods Sold	None
	Money in possession, on deposit or in hand	
	Shares of Stock in all Banks or Banking Associations in this State	
	Household Furniture, exceeding $100 in value, including Books and all Movable Property and Chattels	
	Household Ornaments, such as Statuary, Paintings, Pictures and Works of Art	
	Jewelry, Watches, Silverware or Plateware, Diamonds and all other precious Stones	Premium in course of Co
	Cash value of Stock or Interest in all Steamboats, Steamships, Sailes and all other watercraft in or out of the State	Less
	Franchise within this Parish of Railroads within this State, or partly within this and another State	
	All Machinery and Appurtenances, Locomotives and all other Motive Power	
	Judgments, Suits and Causes in action	
	Franchises, Patents, Copyrights, Trade marks, Privileges and Charters to Canals and other Water Communications	See Schedule annexe
	Bonds of all kinds, specifying each kind and their value	
	All other articles or things not specified above	

☞ Please state if any person assessed is white or colored, in accordance with Act No.

The Tax Assessors for the Parish of Orleans, January 1906

ROOM No. 15, CITY HALL.

New Orleans, La., January 1906

elow and make return to me within ten days after service hereof, at the office of the Tax Assessors for the Parish of Orleans, City Hall, t of which your property will be assessed by said Assessors as required by the Revenue Law. C.Taylor Gauche,

[redacted] TAX ASSESSOR, PARISH OF ORLEANS.

Southern Insurance Co.of N.O. FIRST *in the Seventh Municipal District of the City of New Orleans, Parish of Orleans, La.*

STREET	NUMBER	BETWEEN WHAT STREETS	VALUATION By Taxpayer	VALUATION By District Assessor	VALUATION By Board of Assessors	REMARKS
NUMBER AND DESCRIPTION						
None						
None						
None						
None			110.971		110.900 ✓	
			500		/	
mium in course of Collection		$26.423				
Less 10% allowed		2.642	23.781		26.700 ✓	
See Schedule annexed hereto						

in accordance with Act No. 113 of 1890

30 Submitted.

Extract from the Minutes, Division "A."

WEDNESDAY, *April 24th*, 1907.

Present: Hon. T. C. W. Ellis, Judge.

Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS et als.

The argument in this case came on to be heard this day.
Present: Messrs. Hall & Monroe, Attorney- for Plaintiff.
Messrs. F. C. Zacharie and H. P. Sneed, Att'ys for Tax Collector.
Geo. H. Terriberry, Esq., Att'y for Board of Assessors.
H. G. Dupre, Esq., Ass't City Att'y for City of New Orleans.
And after hearing pleadings and counsel the matter was submitted and taken under advisement.

Reasons for Judgment.

Filed May 17th, 1907.

Civil District Court, Parish of Orleans, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY
vs.
ASSESSORS et als.

Reasons for Judgment.

The Assessment sought to be cancelled is for $112.000 stated on the assessment roll in Column No. 5, "Money loaned on interest, all credits and all bills receivable, for money loaned, or advanced, or for goods sold, *And all credits* of any and every description."

The proof shows that plaintiff did business in this City, for the years in question. It issued policies of Insurance and it was usual to give a delay of 30, sometimes 60 days, for the payment of
31 the premiums. The custom of the Company was not to sue for unissued premiums, but if not paid, at the end of the credit term given, to cancel the policy. Of course, in that case, only a small proportion of the premiums would be carried i. e. for the time Insurance was carried, but the earned premium would be collectable & represents an outstanding obligation of the assessed to the Co.

Whether the Co. should elect to enforce the payment matters not. All premiums, due in the 30 or 60 days, represent credits due the Company in whole or in part, accordingly as they may be paid or not.

The Act of 1898 No. 170 taxes such credits, arising from business done here, whether by our own citizens or by a stranger, who comes here to engage in business.

As this is a suit to cancel and not reduce, the volume of the business is not for consideration.

Judgment for Defendants as prayed for.

N. O. La., May 17th, 1907.

(Signed) T. C. W. ELLIS, *Judge*.

Judgment.

Civil District Court, Parish of Orleans, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE CO.
vs.
BOARD OF ASSESSORS et als.

Judgment.

Considering the law and the evidence to be in favor of defendants and for the written reasons assigned and filed this day,

It is ordered, adjudged and decreed, that there be judgment against the plaintiff, Liverpool & London & Globe Insurance Company, dismissing their suit and for costs of suit.

It is further ordered, adjudged and decreed, that there be
32 judgment in favor of the State Tax Collector, Defendant, for ten per cent attorney's fees, on the amount of taxes and penalties arising or accruing from the assessment herein involved.

Judgment read and rendered in open Court May 17, 1907.

Judgment signed in open Court May 23, 1907.

(Signed) T. C. W. ELLIS, *Judge*.

Motion for Suspensive Appeal.

Filed May 24th, 1907.

Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO. OF NEW YORK et al.
vs.
BOARD OF ASSESSORS.

On motion of Plaintiff, herein represented by its Counsel, Messrs. Hall and Monroe, and on suggesting that a final judgment was

herein rendered on the 17th day of May 1907, and signed on the 23rd day of May, 1907, dismissing this suit; that there is error in this judgment and plaintiff's desire to appeal therefrom suspensively.

It is ordered that a suspensive appeal be allowed to the Plaintiff herein returnable to the Supreme Court on the 3rd Monday of June, 1907 upon Plaintiff's furnishing bond according to law in the full sum of two hundred and fifty dollars; there not being time to complete the transcript by the next return day hereafter.

May 24, 1907.

(Signed) T. C. W. ELLIS, *Judge*.

Appeal Bond.

Filed May 24th, 1907.

Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.
vs.
BOARD OF ASSESSORS.

33 Know all men by these presents That, we, Liverpool & London & Globe Insurance Company as principal and Harry H. Hall as surety are held and firmly bound unto Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, his successors, executors, administrators and assigns in the sum of Two Hundred Dollars for the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents sealed with our seal- and dated in the City of New Orleans, on this 24th day of May in the year of Our Lord, One thousand, nine hundred and seven.

Whereas, the above bounden Liverpool & London & Globe Insurance Company has this day filed a motion of appeal from a final judgment rendered against it in the suit of Liverpool & London & Globe Insurance Company vs. Board of Assessors et als. No. 79725 of the Civil District Court for the Parish of Orleans on the 17th day of May 1907, and signed on the 23rd day of May, 1907.

Now the condition of the above obligation is such, That the above bound Liverpool & London & Globe Insurance Company shall prosecute its said appeal, and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate, real or personal, if it be cast in the appeal; otherwise that the said surety shall be liable in its place.

Signed, sealed and delivered in the presence of

LIVERPOOL & LONDON & GLOBE INSURANCE CO.,
By HALL & MONROE, *Att'ys.* [SEAL.]
(Signed) HARRY H. HALL. [SEAL.]

Agreement.

Filed June 17th, 1907.

Civil District Court, Division "A."

No. 79725.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et als.

34 It is hereby agreed that the "returns" of Teutonia & Son Insurance Cos may be omitted from the transcript of appeal herein.

(Signed) HALL & MONROE,
Att'ys for Plaintiff.
H. G. DUPRE,
Ass't City Attorney.
G. H. TERRIBERRY,
Att'y B'd of Ass'rs.
By DUPRE.
F. C. ZACHARIE,
Att'y State Tax Collector,
By DUPRE.

35 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, William B. Murphy, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing thirty-one (31) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Liverpool & London & Globe Insurance Co. is plaintiff and Board of Assessors et als. are defendants, instituted in this Court and now in the records thereof under the No. 79,725 of the Docket hereof, Division "A," the Honorable T. C. W. Ellis, Judge. Certified copy of Assessment Roll for the year 1906, offered in evidence by Counsel for defendants, filed April 24th, 1907, is forwarded (in original, see Testimony p. 23. City Tax Receipt for 1906, offered in said cause by Counsel for plaintiff, filed June 11, 1907, is forwarded in original. 3 Returns offered in evidence by counsel for plaintiff, filed June 11, 1907, are forwarded in original.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this Eighteenth day of June in the year of Our Lord, one thousand

nine hundred and seven and in the one hundred and thirty-first year of the Independence of the United States of America.

[SEAL.] W. B. MURPHY,
Deputy Clerk.

36 *Proceedings had in the Supreme Court of the State of Louisiana.*

Called and continued (extract from minutes).

NEW ORLEANS, *Monday, October 21st,* 1907.

The Court was duly opened, pursuant to adjournment.
Present their Honors: Joseph A. Breaux, Chief Justice, Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, Associate Justices.
Absent: Alfred D. Land, Associate Justice.

No. 16690.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et als.

This cause came on this day to be heard. Whereupon, on joint motion of counsel for all parties in interest, the Court ordered said cause to be continued.

* * * * * * *

Motion and Order to Try With.

Supreme Court.

No. 16690.

LIVERPOOL & LONDON & GLOBE INS. CO.
vs.
BOARD OF ASSESSORS et al.

No. 16691.

GENERAL ELECTRIC COMPANY
vs.
BOARD OF ASSESSORS et al.

On motion of Hall & Monroe of Counsel for the Plaintiffs in the above cause and on suggesting that the principal issue raised in these cases is identical and that the defendants are represented by the same Counsel.

It is ordered that these causes be consolidated to the extent that

arguments in both may be heard at one and the same time and may be taken up and submitted when either case is reached.

We consent to the above.

(Signed) GEO. H. TERRIBERRY,
Att'y, Br'd of Assessors.

(Signed) H. G. DUPRE,
Asst. City Att'y.

(Signed) HALL & MONROE,
For Pl'ff.

37 (Endorsed:) Nos. 16,690 and 16,691. Supreme Court. Liverpool & London & Globe Ins. Company vs. Board of Assessors. General Electric Company vs. Board of Assessors. Motion to consolidate. Entered and Filed Dec'r 17, 1907. (Signed) T. McC. Hyman, Clerk.

* * * * * * *

Called, Argued and Submitted.

(Extract from Minut-s.)

NEW ORLEANS, *Thursday, February 6th,* 1908.

The Court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice, Frank A. Monroe, Olivier C. Provosty, and Alfred D. Land, Associate Justices.

Absent: Francis T. Nicholls, Associate Justice.

No. 16690.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et als.

This cause came on this day to be heard, and was argued by counsel: Mr. Harry Hinckley Hall, for the plaintiff and appellant; Mr. Francis Charles Zachary, on behalf of the defendants and appellees. The Court then took said cause under advisement upon the briefs now on file for the parties in interest.

* * * * * * *

Final Judgment.

(Extract from Minut-s.)

NEW ORLEANS, *Monday, June 22nd,* 1908.

The Court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

His Honor, Mr. Justice Provosty, pronounced the opinion and judgment of the Court in the following case:

No. 16690.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et als.

On appeal from the Civil District Court for the Parish of Orleans.

38 Judgment Affirmed.

(His Honor, the Chief Justice dissents. Mr. Justice Monroe, is of the opinion that debts due by citizens of this State to foreign corporations are not taxable here, and, therefore, dissents. The Chief Justice will file his reasons hereafter.

* * * * * * *

Opinion.

39 (Mr. Justice PROVOSTY.)

MONDAY, *June 22nd*, 1908.

No. 16690.

LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et als.

Appeal from the Civil District Court for the Parish of Orleans. T. C. W. Ellis, Judge.

The plaintiff company is an English Corporation domiciled in Liverpool, England. It does an insurance business in the State through a local agent. It has brought this suit to set aside and cancel its assessment for the year 1906. The record leaves it uncertain what the assessment was of. In the petition it is stated to have been of "Money loaned on interest and all bills receivable for money loaned on interest or advanced or for goods sold." In the written opinion of the learned judge a quo, it is stated as in the petition, with the addition, however, of the following: "And all credits of any and every description." The assessment itself was not offered in evidence, nor a copy of it, nor any evidence of its contents.

We gather from the testimony that the property intended to be assessed was the amount due plaintiff by its policy holders in this state for premiums upon which a credit of thirty and sixty days had been extended.

Dealing with the case from that standpoint, we are bound to maintain the assessment, for the reason that the said credits are due in

this State and have arisen in the course of the business of the plaintiff company done in this State, and are therefore part and parcel of the said business in this state, and as a consequence are taxable here, as was held in the recent case of General Electric Company vs. Board of Assessors. In that case every question discussed in the brief of the learned counsel for plaintiff in the instant case was considered and decided, and to go over the matter again would serve no useful purpose.

40 The evidence shows the amount of the assessment to be excessive, but as was very properly held by the learned judge a quo, the suit is distinctly for cancellation and not for reduction of the assessment.

Judgment affirmed.

Breaux, C. J. dissents.

MONROE, *J.*:

"I am of opinion that debts due by citizens of this State to foreign corporations are not taxable here. I, therefore, dissent.

41 Mr. Justice PROVOSTY.

MONDAY, *March 16th*, 1908.

No. 16691.

THE GENERAL ELECTRIC COMPANY
VS.
BOARD OF ASSESSORS et al.

Appeal from the Civil District Court, Parish of Orleans, T. C. W. Ellis, Judge.

This is a suit to set aside an assessment. The plaintiff, the General Electric Company, is a New York corporation with its domicile at Schenectady, New York. It has in New Orleans a local agent and an office, and also a warehouse, where it keeps a stock of goods in its line of business. From this warehouse it sells goods for cash, and also on a credit. The credit sales, however, are made only to such customers as have had a line of credit allowed them by the home office in Schenectady, the local agent being without authority to decide whether to extend credit or not. The volume of the cash business is not given; the number of credit customers is fixed at approximately thirty in the City of New Orleans, and fifty in other parts of the state, with an average line of credit of $1500. to each, and one other customer in the city of New Orleans with a line of $15,000. or more. The agent keeps no books, or accounts, or records, except copies of letters. All billing is done from the home office; and also all collections. When a customer is delinquent in his payments, however, the agent is required to jog his memory or prod him. The receiving of payments does not necessarily enter into the

agent's functions; if however, payment is tendered him he receives it and at once transmits the money. When the payment is by cheque, he transmits the same cheque that is given him, even though on a local bank. For the payment of freights and other minor local expenses he keeps a bank account of not exceeding $500. He solicits business. He is without authority to approve contracts, but bargains for them, and draws them up, and transmits them to the
42 home office for acceptance or rejection. His only further connection with the contracts which he thus transmits is in case any payments due under them are not forthcoming, when he is required, as in the case of credit sales made from the local warehouse, to look up the customer and ascertain the cause of his tardiness.

The revenue law, Act 170 of 1898, p. 346, sec. 1, enumerates among the property subject to taxation "all rights, credits, bonds, and securities of all kinds, promissory notes, open accounts, and other obligations"; and after a long and exhaustive enumeration of every possible and imaginable kind of property, rights and credits, it concludes with the following generalization: "and all movable and immovable, corporeal and incorporeal articles or things of value, owned and held and controlled within the State of Louisiana by any person in any capacity whatsoever."

Section 7 of the same act after declaring that "it is made the duty of the tax assessors throughout the state to place upon the assessment list all property subject to taxation" proceeds as follows:

"Provided further, that in assessing mercantile firms the true intent and purpose of this act shall be held to mean, the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average of the capital, both cash and credit, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person or persons representing in this state business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through an agent shall transact business here without paying to the state a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this state are hereby declared assessable within this state, and at the business domicile of said non-resident,
43 his agent or representative. It shall be the duty of the assessor to examine into and to acquaint himself with the insurance carried upon the property, and in determining the value of said stock or assets the average amount of insurance carried by the assured during the twelve months preceding the date of valuation of same shall be by the assessor considered in determining the value of said property.

"Every insurance company doing business in this state shall, on or before the first day of March in each year, render to the Secretary of State a report, signed and sworn to by its President and Secretary of its condition upon the preceding thirty-first day of December, which shall include a detailed statement of its assets

and liabilities on that day; the amount and character of business transacted in this state, monies received and expended during the year and such other information and in such form as he may require."

Section 91 of the same act provides as follows: "The term "credit" includes every claim and demand for money, labor, merchandies, and other valuable things. The word "person" or "Persons," "taxpayer" or "taxpayers," shall be held to include firms, companies, associations and corporations."

Acting under this statute, the Board of Assessors of the Parish of Orleans, in making the assessment of the plaintiff for the year 1904, added $25,000 for credits on open account. The credits thus assessed were not any particular credits; but represented the average credits due to plaintiff in the course of the year in its business.

The plaintiff corporation, as already stated, has brought this suit to set aside the assessment. Plaintiff alleges that all its business is done at Atlanta, Georgia, where it has a branch establishment, and at Schenectady, New York, its home; and that it has no credits in Louisiana for which taxes are due.

If all the credit customers of plaintiff's office and warehouse
44 in the City of New Orleans utilize their line of credit constantly to the full limit, (and the probability is that they approximately do, and nothing shows that they do not), the plaintiff has constantly due to it by the residents of this state and arising out of its business done in this state a matter of $135,000. Therefore, by denying that it has any credits in this state for which a tax is due, plaintiff cannot mean to deny that the credits are due, but simply that they are in this state, or that a tax is due on them.

The first contention of the plaintiff is that the legislature, by the above transcribed statute, has not intended to impose a tax upon credits of the kind here in question.

Counsel's first argument in support of this contention is founded on the fact that Section 1 of said statute, after naming the different kinds of property intended to be taxed, concludes "and all articles or things of value owned and held and controlled within the state,"—using the copulative, and not the disjunctive, conjunction;—and that "Therefore, a thing, to be assessed, must be owned and held and controlled within the state of Louisiana."

We assume that counsel mean by this nothing more than that the thing to be taxed must be situated here,—a proposition no one will quarrel with. Taken as it is expressed, the argument would mean that a thing situated here—a plantation or a stock of goods, for instance—would not be taxable here unless owned here. Certainly, nothing of that kind can be meant.

The next argument in support of the contention that the legislature has not intended to tax these open accounts is that open accounts are not included among the kinds of property upon which taxes are levied. The best possible answer to this argument is: Read the statute. The word- "open accounts" is there printed in plain type among the kinds of property upon which taxes are levied; and, in equally plain type, the duty is imposed upon the assessor to
45 include "open accounts" in his assessments. Therefore the argument merely says no to the plain yes of the statute.

Next, counsel say that "open accounts" are required to be taxed only when due to mercantile firms, and that the plaintiff is not a mercantile firm. The plaintiff sells goods for cash and on a credit out of a stock of goods constantly kept replenished, and for all the court knows may be the largest wholesale and retail dealer in its line of goods in the city of New Orleans. If this does not make plaintiff a mercantile concern it is not easy to conceive what would. But apart from this, how can counsel say that Section 7 of the statute applies only to mercantile firms, when immediately following the first proviso which in terms applies to mercantile firms alone and requires open accounts to be taxed, comes the second proviso viz: "And this shall apply with equal force to any person or persons representing in this state business interests that may claim a domicile elsewhere" &c. Moreover, this section 7 is the general law prescribing the duties of assessors, and necessarily applies alike to all persons and all things taxable.

There can be no serious question but that the legislature has provided that credits due upon open accounts arising out of business done in this state by nonresidents, shall be taxed; and there can be no serious question but that the open accounts in this case have arisen out of business done in this state: the only question must be whether the legislature has the power to tax credits of that kind.

If it had not, all we would have to say would be that it was unfortunate that such was the case. For nothing can be more fair or just than that foreigners and foreign corporations should be made to pay the same tax as the resident citizens and local corporations they come in competition with in the business done in this state.

The state imposes this tax because of her need of the revenue
46 to be derived from it; she extends to the business the protection of her laws, and seeks to make the business bear its just proportion of the burden of taxation. The situation would, be, we repeat, unfortunate,—not to say deplorable—if the state were left no choice between having to forego this needed revenue, or else handicapping with this tax the business of her own citizens and home corporations in their competition with foreigners for the business to be done here. It ought to stand to reason that there is nothing in the constitution of the United States, or elsewhere, to sanction such an impolitic, unjust, unfair and unequal conclusion; and we think there is not.

The only reason suggested why the legislature has not the power is that the open accounts are not situated in this state, but at the domicile of plaintiff, their owner, at Schenectady, New York, and as a consequence are not taxable in this state.

It will be observed that the reason here suggested presupposes two things: first, that these open accounts are situated somewhere; and, second, that if they were situated in this state, they would be taxable in this state.

There can be no doubt of these two propositions. These open accounts have a value, they are legally known as incorporeal things, and like all other things they are situated somewhere. The second proposition is equally clear. It was stated by Chief Justice Marshall

in M'Cullough vs. Maryland, 4 Wheat. 429 (4 L. Ed. 607), in these words:

"All subjects over which the sovereign power of a state extends, are objects of taxation. * * * It (the power of taxation of a state) may be exercised upon every object brought within its jurisdiction." See also Kirtland vs. Hotchkiss, 100 U. S. 491; 25 L. Ed. 561; Saving & Loan Co. vs. Multomat Co. 169 U. S. 426.

There can be no doubt that these open accounts are actually situated either in Schenectady, New York, the domicile of the plaintiff who owns them; or in New Orleans, the domicile of the persons who owe them. In passing, we may note that the fact of
47 these open accounts being taxable at the domicile of the plaintiff would be no reason why they should not be taxable also in Louisiana. Property may be taxed in two jurisdictions. Blackstone vs. Miller, 188 U. S. 205; A. & E. E. Vol. 27 p. 610; Coe vs. Errol, 116 U. S. 517. It may be taxable at the domicile of the owner by reason of jurisdiction over the person of the owner, and at its situs by reason of jurisdiction over it.

By being situated in this state for the purpose of taxation is meant situated in this state indefinitely, that is to say, as part of the bulk of the property of the state; and no merely transiently, as mere objects of commerce that have not yet reached their destination. But no difficulty arises in that connection, for what has been assessed in this case *in* the average amount due to plaintiff year in and year out in its New Orleans business; and therefore the thing assessed, if it be in this state at all, is in this state indefinitely and not merely transiently.

Since open accounts due to non-residents are not taxable in this state unless situated in this state, the legislature of this state by imposing a tax upon open accounts which have grown out of business done in this state has by necessary implication declared that open accounts of that character are situated in this state; or, in other words, has fixed the situs of such open accounts in this state, as far as in its power lies to do so. See to that effect, among other decisions, State Railroad Tax Cases, 92 U. S. 575 (23 L. Ed. 671); Pullman Palace Car Co. vs. Penn. 35 L. Ed. 618; Metropolitan Life Ins. Co. vs. Board of Assessors, 115 La. 707.

The task which plaintiff has undertaken, therefore, is to show that the legislature of this state has erred in supposing that the open accounts assessed in this case are situated here; or that it has the power to fix their situs here. The task *in* not an easy one.
48 The situs even of corporeal things is sometimes involved in great uncertainty. The Supreme Court of the United States has divided on the question of the situs of the property of the Adams Express Co., (165 U. S. 194, 41 L. Ed. 843), and of the coaches of the Pullman Palace Car Co., 141 U. S. 18, 35 L. Ed. 618.

Plaintiff asserts that these open accounts—these incorporeal things—are actually situated at Schenectady, New York, and are not actually situated in New Orleans, Louisiana. How is plaintiff going to prove that assertion. Of course, plaintiff must not undertake to prove that assertion by means of another assertion. For in-

stance, by the assertion that all movables are situated at the domicile of their owner; or, as the Latin maxim expresses it, mobilia sequuntur personam. One assertion cannot prove another. Plaintiff would have to prove that all movables are situated at the domicile of their owner. We know that said maxim cannot serve as a guide in the matter of the taxation of corporeal movables. The goods which plaintiff keeps on hand in its warehouse in New Orleans are situated there for the purposes of taxation. The goods are physically present to indicate their situs. The open accounts growing out of the same business, and representing the price of goods sold out of the same warehouse to persons resident in this state, are incorporeal, and hence as to them the truth or falsity of the assertion that they are situated at the domicile of their owner in New York is not so easily tested. But when it comes to fixing their situs for the purposes of taxation, is said maxim a safer guide in their case than in the case of the goods.

The test of physical presence failing us in the case of incorporeal movables for ascertaining actual, or juridical, situs, what other test may we have recourse to? The learned counsel for plaintiff have not suggested a single one for showing that these open accounts are actually situated in Schenectady, New York; and not in New Orleans, Louisiana. They have contented themselves with the assertion that movables follow the person of their owner, and with citation of decisions founded upon that assertion, and upon absolutely nothing else.

49 One test of the situation of a thing for the purpose of its taxation is the enquiry: At what place does it receive the protection of the law. The protection of the law and taxation are reciprocal. For the purposes of taxation, a thing, as a general proposition, is situated at the place where it receives the protection of the law. While this is not true where the situs of the thing is merely temporary, it is true where the situs is permanent. Cooley, Taxation, 2nd Ed. pp. 1 and 19; A. & E. E. Vol. 27, p. 581.

Tested by the foregoing, the open accounts involved in this case are situated in Louisiana. Not only they are dependent upon the laws of this state for their enforcement, but also they receive from the laws of this state the benefit of a lien or privilege upon the thing sold, for the security of their payment. These open accounts receive directly no more protection from the laws of New York than from the laws of China.

In the case of Blackstone vs. Miller, 188 U. S. 205 (47 L. Ed. 444) where a credit was sought to be subjected to an inheritance tax, the Supreme Court of the United States said:

"We shall not stop to discuss this aspect of the case, because we prefer to decide it upon a broader view.

"The transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other words, if the transfer is subject to the power of the state of New York, then New York may subject the transfer to a tax. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the

debt, but because of the practical fact of its power over the person of the debtor. The principle has been recognized by this court with regard to garnishments of a domestic debtor of an absent defendant. What gives the debt validity? Nothing but the fact but the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So, again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation, and extend to debts the rule still applied to slander, that actia personalis moritur cum persona, and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone.

"Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax owed by its citizens than upon tangible chattels found within the state at the time of the death. The maxim, Mobilia sequuntur personam, has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

Other tests of where *of* a thing is situated are, Where may it be seized in the satisfaction of the debts of its owner; Where may actual delivery of it be made in case it is sold; and Where is the legal evidence of its existence to be found, in case its existence is denied. In connection with the first of these tests, the Supreme Court of the United States held in the case of Chicago vs. Sturm, 174 U. S. 710 (43 L. Ed. 1144) as follows:

"A debt may be attached at the domicile of the debtor, though the creditor's domicile is in another state".

See also New Orleans vs. Stempel, 44 L. Ed. 181; also 47 L. Ed. 442, 444.

Our Code of Practice, by articles 245 and 246, expressly provides for the seizure of debts in the hands of the debtor by writs of attachment and fieri facias in a suit against the creditor.

With reference to the second of the above mentioned tests —that as to the place where actual delivery may be made,—our Civil Code, Art. 2643, provides that the transferee of a credit is possessed of it, as regards third persons, only after notice of the transfer having taken place has been given to the debtor. Of course when the debtor lives in this state such notice can be given to him only in this state.

The third of the above mentioned tests,—that as to where the legal evidence of the existence of these open accounts is situated,— shows equally that these open accounts are situated here, since the only legal evidence of their existence is the testimony of the persons living here who alone have any personal knowledge of the transactions out of which they have grown.

These open accounts could not be seized by the tax collector or by the sheriff at the home of the plaintiff; if plaintiff sold them, actual delivery of them could not be made there; plaintiff could not exhibit there any evidence of their existence. On the other hand, these open accounts could be seized by the sheriff or tax collector here, by garnishment of the debtors; they could be made the basis of the jurisdiction of our courts in a suit brought here against the absentee plaintiff; actual delivery could be made of them here by serving notice on the debtors; the only available legal evidence of their existence is here in the persons of the only witnesses having personal knowledge of the transactions out of which they have grown. Now, can it be said that a thing is actually, and not merely fictively, situated at a place where it cannot be seized, or delivered, indeed where no evidence whatever of it exists; and, econverso, can a thing be said not to be actually situated at a place where it can be seized, and where actual delivery of it can be made. Dealing with a case where the debt was on a note, the Supreme Court of the United States said:

"Now if property can have such a situs within the state as
52 to be subject to seizure and sale on execution, it would seem to follow that the state has power to establish a like situs within the state for purposes of taxation." New Orleans vs. Stempel 175, U. S. 316 (44 L. Ed. 179).

This reasoning applies with equal force to the present case, since the credit in the case is equally "subject to seizure".

The fact that credits against non-resident debtors may be sold at the domicile of the creditor, is adduced as proof that such credits are situated at the domicile of the creditor; but that fact only proves that the credits are owned there, not that they are situated there. In like manner a stock of goods, or a plantation, situated in Louisiana, may be sold in New York; but that does not prove that they are situated in New York.

It is also said that a distinction must be made between the credit and the corresponding debt; that the credit is situated at the domicile of the creditor, and the debt at the domicile of the debtor; that the credit is property and can be taxed; but the debt is not, and cannot be taxed. But, with all due deference, this is a mere play upon words. The credit and the debt are one thing. When the sheriff seizes the debt under garnishment he seizes the credit; and the proof of it is that if the garnishment were to absorb the debt there would be no credit left.

By fiction these credits are situated at the domicile of their owner in New York; but the taxing power does not deal with fiction; it deals with fact. Sometimes corporations are doing a large business in other states and own a great deal of property there while having no property in the state of their domicile. If such were the case with plaintiff, and the state of New York undertook to tax these credits, the reality of the situation would soon be developed in the inability of the state of New York to make its taxes good otherwise than by garnishment process in Louisiana. In the case of Kirtland
vs. Hotchkiss, 100 U. S. 491, 25 L. Ed. 558, where the state
53 of Connecticut levied a tax upon mortgage bonds owned by a resident of the state but held and secured in Chicago, Ill., the

tax collector was unable to satisfy the tax by recourse against the bonds, and had to seize other property of the tax debtor situated in Connecticut which had already borne its just share of taxation. If the tax debtor had not had this other property, the tax could have been made good only by proceedings in Chicago against the bonds.

By the foregoing argument, it is not intended to deny the taxability of debts at the domicile of the creditor; nor to assert that the situs of a debt follows the debtor wherever he may go; nor even that isolated debts of every kind have a situs at the domicile of the debtor; although this last proposition would be, we are aware, the logical conclusion from the argument. All that it is intended to show is that in the law of taxation, that is to say, according to the reality of things, the maxim mobilia sequuntur personam may be as misleading with respect to the taxing situs of incorporeal movables as it is with respect to the taxing situs of corporeal movables; and that such a thing is possible as that under certain circumstances a debt on open account should have a situs at the domicile of the debtor. And for this last proposition we have the authority of the Supreme Court of the United States, to which court the determination of such a question naturally belongs. In Metropolitan Life Ins. Co. vs. New Orleans, 205 U. S. 398; 51 L. Ed. 855, that exalted tribunal, speaking of the above quoted statute taxing these open accounts, said:

"The evident purpose of this law is to lay the burden of taxation equally upon those who do business within the state. It requires that in the valuation for the purposes of taxation of property of mercantile firms, the stocks, goods, and credits shall be taken into account, to the end that the average capital employed in the business shall be taxed. This method of assessment is applied impartially to the citizens of the state and to the citizens of other states or countries doing business, personally, or through agents, within the state
54 of Louisiana. To accomplish this result the law expressly provides that all bills receivable, obligations, or credits arising from the business done in this state shall be assessable at the business domicile of the resident. Thus it is clear that the measure of the taxation designed by the law is the fair average of the capital employed in the business. Cash and credits and bills receivable are to be taken into account merely because they represent the capital, and are not to be omitted because their owner happens to have a domicile in another state. The law was so construed by the Supreme Court of Louisiana, where, in sustaining the assessment, it was said:

"There can be no doubt that the 7th section of the act of 1898, quoted in the judgment of the district court, announced the policy of the state touching the taxation of credits and bills of exchange representing an amount of the property of nonresidents equivalent or corresponding to said bills or credits which was utilized by them in the prosecution of their business in the state of Louisiana. The evident object of the statute was to do away with the discrimination existing in favor of nonresidents as against residents, and place them on an equal footing. The statute was not arbitrary, but a legitimate exercise of legislative power and discretion".

Since the above quoted statute has mentioned open accounts by

name among the kinds of property upon which a tax is levied, and, in prescribing the duties of the assessors, has mentioned open accounts by name among the kinds of property which that officer is to include in his assessment of the property of nonresident persons, firms and corporations doing business in this state: and since it is an undisputed proposition that a state has the power and right to tax all property of whatsoever kind permanently or indefinitely situated with- its limits, and since the assessment in this case is not of transient, or even isolated, credits but is of the average amount of
55 the credits which the plaintiff has in its permanent business in New Orleans,—it would seem the sole question that could arise in connection with the taxibility of the credits involved in this case would be that of whether or not they are situated in this state. But a good many decisions in discussing the taxibility of credits, have attached importance to the manner in which the credits are evidenced.

For our part, we are unable to see what the manner in which a credit is evidenced has to do with its taxibility. The proposition being conceded that a state has the right to tax all property situated within its limits, the taxibility of a credit should depend upon its being situated or not within the state and not upon its being evidenced or not in any particular manner. The credit is one thing; the evidence of it is another thing; and, as has been said by the Supreme Court of the U. S. in a number of decisions, the tax is on the credit; not on the evidence of it. We do not see why the form of a credit should have anything more to do with its taxibility than the form of a horse has to do with his taxibility.

Of course the case is entirely different where the credit has become, as it were, merged in the evidence of it, so that the mere evidence has itself become property and is itself the thing upon which the tax is levied, as in the case of bank notes, etc.: the form is then all-important. In the case of State Tax on Foreign Held Bonds, 15 Wal. 300, the Supreme Court of the United States likened credits of that kind to corporeal property which is taxable wherever situated. But the court in that case made a broad distinction between credits of that kind, and all other kinds of credits which are mere credits, the evidence whereof has not itself become property. The court said: "But other personal property, consisting of bonds, mortgages and debts generally, has no situs independent of the domicile of the
56 owner". This distinction here made by the court is not between debts evidenced by writing and debts not evidenced by writing, but between credits whereof the evidence is by custom and usage treated as being in itself property, such as bank notes, etc.; and credits of all other kinds, the evidence whereof is not by custom and usage treated as being in itself property. All credits of the latter description, that is to say, "bond, mortgages and debts generally", are placed by the court on the same plane, in the same category, and are said to have no situs independently of the domicile of the owner.

We could understand that the manner in which the debt was evidenced, would be significant if the situs of the evidence of the debt were taken to be the situs of the debt, or even an indication of

the situs of the debt. But this is not so. In the case of Kirtland vs. Hotchkiss, 100 U. S. 491, where a debt was evidenced by bonds, secured by mortgage on property situated in Chicago, Ill., and held there, the situs of the debt was held to be in the state of Connecticut at the domicile of the owner. In Savings & Loan Society, vs. Multnomah County, 169, U. S. 426 (42 L. Ed. 803) the Court held that a mortgage debt was taxable in the state where the debtor resided and the property upon which the mortgage rested was situated, although the bonds evidencing the debt were constantly owned and held outside of the state. In Buck vs. Beach 206 U. S. 392; 51 L. Ed. 1106, mortage notes belonging to a resident of New York, but in the possession of an agent in Indiana, were held to have their situs in Ohio where they were due and secured by mortgage, and to be taxable there and not in Indiana. In Metropolitan Life Ins. Co. vs. Board of Assessors, 115 La. 689, promissory notes due by residents of this state but owned and held in New York were held to be taxable here. Thus it is seen that the written evidence of the debt not only does not determine the situs of the debt, but can have no influence in fixing it. In the two last mentioned cases, both the creditor and the
57 evidence of the debt were out of the taxing state. Where the debt is evidenced by writing but the evidence is situated out of the taxing state, the fact of its being so evidenced ought logically to detract from and not add to its taxibility in the taxing state, for it ought to be an additional indication of its not being situated in the taxing state.

Again, we could understand that there would be a difference between debts evidenced by writing and those not so evidenced, with regard to their taxability, if the statute imposing the tax made such a distinction; but it does not, it imposes the tax upon open accounts by name and, in prescribing the duty of assessors, requires open accounts by name to be assessed.

Is this court to hold this statute to be constitutional in so far as it taxes such credits as are evidenced by writing although the writing is situated in another state, as was done in the Metropolitan Life Ins. Co. case; and unconstitutional in so far as it taxes credits whereof the evidence, although not in writing, is situated in this state, in the persons who alone have personal knowledge of the transaction out of which the credits have grown. If we did this, we should be making the constitutionality of the statute depend, not upon the credit being situated or not within this state, but upon its being evidenced or not by writing. We should be adopting a distinction not made by the statute, not made by the constitution, not founded upon the nature of things, but simply of our own fabrication.

This would not be true, we repeat, if the situs of the evidence of the debt determined the situs of the debt. The fact of there being written evidence would then, we repeat, be all-important. The court in ascertaining the situs of the debt, would enquire where was the situs of its evidence. But, as already stated, the decisions are all to the effect that the tax is on the debt and not on the evidence of it, (except in the case of certain evidences of debt which are themselves

property), and that the situs of the evidence does not deter-
58 mine, or even indicate, the situs of the debt.

The decisions of this court in Bluefields Banana Co. vs. Board, 49 Ann. 43; Parker vs. Strauss, 49 Ann. 1173, Comptoir National d'Escompte vs. Board, 52 Ann. 1319; Metropolitan Life Ins. Co. vs. Board of Assessors, 115 La. 698; and Monongahela Coal & Coke Co. vs. Board, lb. 564, were not put on the ground that the credits there involved were evidenced by writing, but on the broad ground that said credits represented capital engaged in business in this state, and receiving the protection of the laws of this state, and therefore taxable in this state.

These decisions are a departure from the earlier jurisprudence, but they are in accord with the later jurisprudence of the country. Thus in the recent work of Gray on Limitations to Taxing Power, p. 89, we find the following:

"In other recent cases it has been held that credits in the form of notes, choses in action, and book accounts, belonging to a foreign corporation doing business in the taxing state, which credits resulted from its business operations in the state, are taxable".

In other recent works we find the following:

"A foreign corporation, which is liable for personal taxation for sums invested in business in this state, is taxable upon credits and bills receivable which are in this state and are due the corporation for merchandise sold by it in the transaction of business in this state."

Hammond on Taxation of Business Corporations, par. 29, p. 22.

"And it is well settled that choses in action, whether book accounts, promissory notes or other credits due in the regular course of business carried on by a foreign corporation within a state, are taxable". Beale on Foreign Corporations, p. 647, Sec. 488.

The earlier jurisprudence of this state was founded upon the doctrine that the situs of personal property is at the domicile of
59 the owner, or, as expressed by the latin maxim, mobilia sequuntur personam. In the leading case of Barber Asphalt Co. vs. City, 41 Ann. 1015, which involved paving certificates, a kind of credits evidenced by writings having almost the probative force of judgments, the court held broadly that credits could have no situs elsewhere than at the domicile of the owner; and the decisions of Liverpool London & Globe Ins. Co. vs. Beard, 44 Ann. 760; same vs. Same, 51 Ann. 1028; Railway vs. Assessors 44 Ann. 766; Glason vs. City, 46 Ann. 1, are founded upon the same doctrine.

Those cases lose their authority when it is shown that the doctrine of mobilia sequuntur personam, upon which alone they are founded, can be of no utility in fixing the situs of movables, whether corporeal or incorporeal, with reference to their taxability. This is so because, as is incontestibly established by the later decisions, the said doctrine is not founded upon the nature of things, but is simply a legal fiction adopted arbitrarily by the courts for convenience in the settlements of estates; and, being a fiction, cannot be set up for staying the hand of the taxing power, which, as said by Cooley, Tax. p. 19, levies upon whatever property may be within its reach. When prop-

erty corporeal or incorporeal is proposed to be withdrawn from under the operation of the taxing power, that is to say, of the sovereignty of a state, the question is not as to where it is fictively situated, but as to where it is actually situated, or, in other words, as to whether it is within reach. A horse, or a stock of goods, in New York cannot be taxed in Louisiana because it is not within reach of the sovereignty of the state of Louisiana. But it will not do to say that the sovereignty of the State of Louisiana, in its need for revenue, cannot reach the accounts involved in this case when the same accounts are within the reach of the civil sheriff of the parish of Orleans, right here in New Orleans, at the suit of any private creditors of plaintiff.

In the recent case of Blackstone vs. Miller, 188 U. S. 205
60 (47 L. Ed. 439), the matter involved was the right of the state of New York to levy an inheritance tax upon two credits inherited by a resident of the state of Illinois, one growing out of a deposit of money in bank, and the other out of an ordinary debt for money, in the state of New York. In discussing the case the court said:

"Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owned by its citizens than upon tangible chattels found within the state at the time of the death. The maxim mobilia sequuntur personam, has no more truth in the one case than in the other. When logic and the policy of a state conflict with a fiction due to historical tradition, the fiction must give way."

In Chicago vs. Sturm, 174 U. S. 712 (43 L. Ed. 1144) the Supreme Court of the United States in discussing the situs of a debt said:

"A debt may be as valuable as tangible things. It is not capable of manual seizure, as they are; but no more than they can it be appropriated by attachment without process, and the power to execute process. A notice to a debtor must be given, and can only be given and enforced where he is. This, as we have already said, is a necessity, and it cannot be evaded by the insistence upon fiction or refinements about situs or the rights of the creditor. Of course, the debt is the property of the creditor; and, because it is, the law seeks to subject it, as it does other property, to the payment of his creditors. If it can be done in any — way than by process against, and jurisdiction of, his debtor, that way does not occur to us."

In New Orleans vs. Stempel, 175 U. S. 318 (44 L. Ed. 179) the Supreme Court of the United States quoted approvingly from the case of Wilcox vs. Ellis, 14 Kansas 588, as follows:

"The power of the state to tax a citizen and resident of Kansas on money due him in Illinois, evidenced by a note, which is left
61 in Illinois for collection, was denied, the court saying, after referring to the maxim *mobila sequuntur personam*.

"This maxim is at most only a legal fiction; and Blackstone, speaking of legal fiction, says, "This maxim is invariably observed, that no fiction shall extend to work an injury, its proper operation being to prevent a mischief or remedy an inconvenience that might result from the general rule of law" 3 Bl. Com. 43. Now as the state of

Illinois, and not Kansas, must furnish plaintiff with all the remedies that he may have for the enforcement of his rights connected with said notes, debts, etc. it would seem just, if said debt is to be taxed at all, that the state of Illinois, and not Kansas, should tax it, and that we should not resort to legal fictions to give the state of Kansas the right to tax it."

And to this the Supreme Court of the United States added:

"The decisions of the highest courts of New York are to the same effect."

In State Board of Assessors vs. Comptoir National d'Escompte, 191 U. S. 399 (48 L. Ed. 237) the Supreme Court of the United States said:

"The maximum, *mobilia sequuntur personam*, which was applied in the court below as forbidding taxation of the checks in the hands of the agent in New Orleans, has been frequently held to be but a fiction of law, having its origin in considerations of general convenience and public policy, and not to be applied to limit and control the right of the state to tax property within the jurisdiction, it being intended to permit the owner to deal with his personality according to the law of his domicile, and to make testamentary disposition of it according to the law where he is rather than that of the situs of the property. It was intended for convenience, and not to be controlling where justive does not demand it".

62 To the same effect are the decisions of this court in the cases of Metropolitan Life Ins. Co. and Monongahela River Coal & Coke Co. supra.

We fail entirely to understand how it can be said that these open accounts are not within the reach of the taxing power of the state, when they are within the reach of the Civil Sheriff of the parish of Orleans at the suit of any ordinary creditor of plaintiff, and are within the reach of the tax collector who could, by regular recourse against them, realize out of them the taxes imposed upon them. Why the open accounts should be sufficiently tangible and concrete to be taxable and when due to residents too intangible and abstract for undergoing the same process, when due to non residents, we are utterly unable to understand—except on the theory of *mobilia sequuntur personam* which, as shown above, is as thoroughly exploded in the law of taxation as the theory of nature abhorring a vacuum is exploded in the law of physics.

We conclude that the open accounts assessed in the case are part of the capital of the plaintiff invested in business in this state and as such are taxable in this state.

Judgment Affirmed.

NICHOLLS, J., Concurs in the decree.

LAND, J. "I concur in the decree on the ground that the tax is on capital invested in this State."

MONROE, J. "I Dissent."

BREAUX, Chief Justice. "For the reasons assigned in my dissenting opinion this day handed down in the Case of National Fire Insurance Company vs. Board of Assessors et al, No. 16,745. I dissent."

63 Supreme Court of Louisiana.

No. 16390.

THE LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY OF NEW YORK
versus
THE BOARD OF ASSESSORS.

Petition for Rehearing.

To the Honorable the Justices of the Supreme Court of Louisiana:

The petition of the Liverpool and London and Globe Insurance Company, a New York corporation, domiciled in the City of New York (and not, as stated in the opinion of this Court, domiciled in Liverpool, England), with respect represents that it is advised and verily believes that there are many grevious errors of law and fact in the opinion and decree of this Honorable Court, and, because of the same, it is justly entitled to a rehearing of this cause.

And petitioner alleges the following, of many grounds, in support of this application, to wit:

I.

The opinion erroneously assumes that this cause is identical with the case of the General Electric Company vs. Board of Assessors, No. 16,691 of the docket of this Court, whereas it is totally different in at least one important particular. In the General Electric Company case the open accounts sought to be taxed arose exclusively from the sale of a stock of merchandise located in a warehouse in this City of New Orleans; whereas, in the instant case, the open accounts assessed were unpaid premiums due upon policies of insurance issued in the City of New York. In the General Electric Company case Chief Justice Breaux and Mr. Justice Monroe dissented, Mr. Justice Land stated, "I concur in the decree on the ground that the tax is on capital invested in this State," and Mr. Justice Nicholls only concurred in the decree.

Therefore, while the Chief Justice and Mr. Justice Monroe still dissented in the instant case, it may properly be assumed that Mr. Justice Land and Mr. Justice Nicholls only concurred because of the erroneous intimation conveyed by the opinion that the issues in the two cases were identical.

II.

The present case was argued and submitted on the 6th of February, 1908, and was held under advisement and not decided until June 22, 1908. During the arguments, when the facts herein were stated by counsel, and were fresh in the minds of the Court, counsel for the defense were told from the bench that the unbroken decisions of this Court and of the United States Supreme Court, declaring that such open accounts as these could not be taxed at the domicile of

the debtors, were conclusive, and that it was a waste of time to argue the question.

That line of decisions has remained unbroken, and we cannot assume that your Honors have changed your minds as to this
64 elementa*ry* proposition, but are constrained to the belief that inadvertent concurrence in the opinion resulted from confusion of this cause with many other pending assessment suits and from failure, after the considerable lapse of time, to recall the facts which differentiate this from the other.

III.

Apparently all of these many suits involving taxation of open accounts have been assigned to Mr. Justice Provosty. With all respect for his Honor, we submit that the several decisions rendered reflect rather his opinion than those of the Court, and that his zeal for the fisc has permitted him, in this opinion of one page, to attempt to overturn the time-honored, unbroken jurisprudence of the United States Supreme Court and of this Court, and to ignore both Federal and State Constitutions.

In the General Electric Company opinion his Honor said:

"The State imposes this tax because of her need of the revenue to be derived from it. She extends to the business the protection of her laws, and seeks to make the business bear its just proportion of her burden of taxation.

"The situation would be, we repeat, unfortunate, not to say deplorable, if the State were left no choice between having to forego the said needed revenue, or else handicapping with this tax the business of her own citizens and home corporations in their competition with foreigners for the business to be done here.

"It ought to stand to reason that there is nothing in the Constitution of the United States, or elsewhere, to sanction such an impolitic, unjust, unfair and unequal conclusion, and we think that there is not."

IV.

There is no question in the instant cause of the taxability *vel non* of open accounts due to a foreign creditor, and represented by notes or other tangible evidences of debt, nor yet resulting from the sale of a stock of goods located within its taxing jurisdiction. The things the right to tax which is alleged to be illegal and unconstitutional are open accounts due for premiums of insurance to a corporation domiciled in New York—incorporeal things, abstractions.

This Court has held always that such incorporeal things, abstract debts, could not be taxed at the domicile of the debtor.

41 An. 1015; 44 An. 760; 44 An. 766; 51 An. 1028.

And such have ever been the decisions of the United States Supreme Court.

11 Wall. 429; 15 Wall. 300; 10 U. S. 327; 111 U. S. 701; 153 U. S. 628; 173 U. S. 193; 188 U. S. 385.

And the assumption that recent decisions of the United States Supreme Court have modified the rule laid down in 15 Wall 300, is

completely answered in Buck vs. Beach, 206 U. S. 407, where the Court reverts to the old case in 15 Wallace, and cities with approval the principle therein originally laid down.

The Court says:

"Although public securities, consisting of State bonds and bonds of municipal bodies, and circulating notes of banking institutions, have sometimes been treated as property in the place where they were found, though removed from the domicile of the owner (State Tax on Foreign-Held Bonds, 15 Wall. 300, 324), it has not been held in this Court that simple contract debts, though evidenced by promissory notes, can, under the facts herein stated, be treated as property and taxed in the State where the notes may be found.

"As is said in the above-cited case at page 320: 'All the property there can be in the nature of things, in debts of corporations, belongs to the creditors, to whom it is payable, and follows their domicile, wherever that may be. Their debts can have no locality separate from the parties to whom they are due. This principle might be stated in many different ways, and supported by citation from numerous adjudications, but no number of authorities, and no forms of expression, could add anything to its obvious truth, which is recognized upon its simple statement.'

"The cases cited in Metropolitan Insurance Company case, *supra*, show that this rule is enlarged to the extent of holding that
65 capital, evidenced by written instruments, invested in a State, may be taxed by the authorities of a State, although their owner is a nonresident, and such evidences of debt are temporarily outside of the State when the assessment is made. Although the language of the opinion in the case of State Tax on Foreign-Held Bonds, *supra*, has been somewhat restricted so far as regards the character of the interests of the mortgagee in the land mortgaged (Savings, etc., Society vs. Multnomah County, 169 U. S. 421, 428), the principle upon which the case itself was decided has not been otherwise shaken by the later cases."

V.

The effect of the decision herein is to deprive plaintiff of its property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution.

"All rights over which the sovereign power of a State extends are objects of taxation; those over which it does not extend are upon the soundest principles exempt from taxation. * * * (188 U. S. 396.) The taxation of that franchise or incorporeal hereditament by Kentucky is, in our opinion, a deprivation by that State of the property of the ferry company without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States."

Id. 398.

"If the Legislature of a State should enact that the citizens or property of another State or Power should be taxed in the same manner as the persons and property within its own limits, and subject to its

authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition.

Jurisdiction is as necessary to valid legislative as to valid judicial action."

11 Wall. 429; 106 U. S. 327; 191 U. S. 388, and cases cited above.

VI.

This assessment is violative of the Constitution of Louisiana, which prohibits suit for the collection of taxes. Without suit and garnishment process, it would be impossible to make a seizure of these open accounts in the hands of the debtors.

51 An. 1029.

VII.

The United States Supreme Court has never held, nor has any other Court, so far as we have been able to discover, that a sum of money due under open account, and not evidenced by any tangible instrument or document, can be taxed to the nonresident creditor at the domicile of the debtor.

VIII.

The opinion herein says:

"The record leaves it uncertain what the assessment was of. In the petition it is stated to have been of 'money loaned on interest and all bills receivable for money loaned on interest or advanced for goods sold.'"

This is error. The averment in the petition is an exact copy of the assessment, and so accepted by counsel for defendants. The petition reads: "Money loaned on interest, all credits and bills receivable for money loaned on interest or advanced or for goods sold, $112,000."

The opinion omits the word "all credits."

The record shows that plaintiff had no bills receivable, nor any values except premiums due on open account.

IX.

A credit of thirty to sixty days was not given as such, but it was the custom to collect within that time just as in the case of goods sold in commercial houses.

X.

The assessment complained of ($112,000), if valid, should be $1,730, as shown by the undisputed evidence.

66 The demand for the cancellation of the entire assessment, coupled with the allegation of nullity and the prayer for all general and equitable relief, should cover the proven nullity of the excess, and the Court, in its equity powers, would hardly impose, in addition to the penalties attached by law, a tax sixty times as great as the sum actually due if the tax were legal.

Certainly an assessment in excess of the actual value of the thing assessed is null. And this Court, in its recent decision in the Travelers' Insurance case, held that the failure by one in good faith to make a return for taxation, where the property had not before been taxed, would not prevent the reduction.

XI.

The rendition of the judgment herein, after a delay of more than four months, and so near the adjournment, does not give sufficient time in which to adequately consider these issues, and if, for no other reason, a rehearing should be granted.

Wherefore, and for the reasons fully set out in the original brief herein and in the brief in support of the application for rehearing in the General Electric Company case, petitioner prays that a rehearing be granted, and for general relief, and, as in duty bound, your petitioner will ever pray, etc.

HALL & MONROE,
Attorneys for Petitioner.

66½ [Endorsed:] Supreme Court of Louisiana. No. 16,690. The Liverpool & London & Globe Insurance Company of New York versus The Board of Assessors et al. Petition for Rehearing. Hall & Monroe, Attorneys. Supreme Court of Louisiana. Filed Jun- 29, 1908. T. McC. Hyman, Clerk.

67 *Rehearing Refused.*

(Extract from Minut-s.)

NEW ORLEANS, WEDNESDAY, *October 7th*, 1908.

The Court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty and Alfred D. Land, Associate Justices.

No. 16690.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et als.

By the COURT: It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error.

In the Supreme Court of the United States, October Term, 1908.

No. —.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY
vs.
THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS et al.

To the Honorable the Chief Justice of the Supreme Court of the State of Louisiana:

The petition of the Liverpool & London & Globe Insurance Company, a corporation organized under the laws of the state of New York, and whereof H. W. Eaton is President, respectfully shows that, on the 22nd day of June 1908, the Supreme Court of Louisiana rendered against your petitioner a judgment, (which by refusal of an application for rehearing became final on the 7th day of October 1908), in a certain cause, No. 16,690 of the *of the* docket of the court, wherein your petitioner was plaintiff and the Board of Assessors for the Parish of Orleans, the State Tax Collector and the City of New Orleans were defendants, and rejected Petitioner's demand for the cancellation and annulment of an alleged illegal assessment against it of "credits" in the sum of $112,000.00, being for premiums under open account due to petitioner by Louisiana debtors for fire insurance policies issued to them from petitioner's domicile in the City of New York, and rendered judgment awarding execution against your petitioner for 10% (ten per cent) of the tax involved as attorney's fees, and costs as will appear by reference to the record and proceedings in said cause, that said Supreme Court is the highest court of the said State in which a decision in said suit could be had.

68

And your petitioner claims the right to remove said judgment to the Supreme Court of the United States, by writ of error under the Statutes of the United States authorizing a writ of error to State Courts to-wit:

Par. 709 Revised Statutes, judiciary act of March 3rd 1891, 26 Stat. 826 ch. 517 because petitioners in said suit averred that the Revenue Acts of Louisiana do not purport or pretend to authorize the assessment or levy of a tax upon premiums due to foreign or nonresident insurance companies under open, unliquidated accounts.

That the levying of a tax upon incorporeal things such as abstract credits, not in so called concrete form and without tangible shape, violates the Fourteenth Amendment of the Constitution of the United States;

That premiums due on open account to a Foreign or nonresident corporation cannot be taxed, the Legislature of a State not having power to localize for taxation, an abstract credit away from the domicile of the creditor corporation, the State power of taxation

being limited to persons and property within its jurisdiction (Petition P. 2).

All of which appears by the record of the proceedings in said cause, which is herewith submitted.

69 And Petitioner avers that the Supreme Court of Louisiana in said cause, by a majority of one, decided otherwise and in direct opposition to the unbroken line of decisions and jurisprudence on this subject of the Supreme Court of the United States.

St. Louis vs. Ferry Co. 11 Wall. 429. State tax on foreign held bonds, 15 Wall. 300. U. S. vs. Erie R. R. Co. 106 U. S. 327; Hagan vs. Reclamation District 111 U. S. 701; Erie R. R. vs. Pennsylvania 153 U. S. 628, Dewey vs. Des Moines, 172 U. S. 193; Louisville etc. Ferry Co. vs. Kentucky, 188 U. S. 385. Buck vs. Beach, 206 U. S. 407.

Wherefore, your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States, and for citation and supersedeas; and it will ever pray, etc.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY,
In the Absence of Its President, by Its Resident Sec't'y,
(Signed) Per J. G. PEPPER, *Ass't Gen. Ag't.*
(Signed) HARRY H. HALL,
(Signed) J. BLANC MONROE,
Att'ys for Petitioner.

Order Granting Writ of Error.

Order.

Let a writ of error operating as a *supersedeas* be granted unto the Liverpool and London and Globe Insurance Company, the petitioner herein, to the Honorable the Supreme Court of the United States upon its giving bond, with good and solvent security, and conditioned according to law, in the sum of Sixteen thousand dollars.

New Orleans, October 13, 1908.
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 16,690. Supreme Court of Louisiana. Liverpool & London & Globe Ins. Company vs. Board of Assessors for the Parish of Orleans et al. Petition for writ of Error. Filed Oct'r 13, 1908. (Signed) T. McC. Hyman, Clerk.

70 Supreme Court of the United States, October Term, 1908.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY
vs.
BOARD OF ASSESSORS et al.

Comes the Liverpool & London & Globe Insurance Company of New York, plaintiff in error, by its Counsel, and respectfully represents:

That it believes itself to be aggrieved by the proceeding and *ju* judgment of the Supreme Court of Louisiana in the above entitled cause, and assigns error thereto, as follows:

1. The court erred in deciding that Insurance premiums, due under open account to Plaintiff in error, a New York Corporation, not domiciled or having a place of business in Louisiana, by holders of its policies residing in Louisiana, can legally be assessed and taxed in Louisiana, said Court by thus deciding, necessarily refusing to give effect to the Fourteenth Amendment of the Constitution of the United States, the protection of which was claimed by Plaintiff in Error in contesting the said assessments and taxes.

2. The Court erred in deciding that such premiums, not in so called concrete form and without tangible shape, can be assessed for taxation away from the domicile of the creditor and at the domicile of the debtor, without violating the Fourteenth Amendment of the United States Constitution which was by the Plaintiff in error invoked herein, in its application to annul the said assessments.

3. The Court erred, in that Plaintiff in error, having set up in its petition that the effect of the assessment and tax aforesaid away from its domicile and at the domicile of its debtors, of the premiums due to it under open account, not in so called concrete form, was to deprive it of its property without due process of law, in violation of the Fourteenth Amendment of the Federal Constitution,—the Court decided against the right, privilege and immunity thus specially set up and claimed.

71 *4.* The Court erred in holding that the taxing authorities of the State of Louisiana, can locally assess and tax an abstract credit away from the domicile of the foreign creditor and at the domicile of the debtor, and in thus holding that the powers of taxation of a state can extend beyond its jurisdiction, in violation of the Fourteenth Amendment of the Federal Constitution.

Wherefore, said Liverpool & London & Globe Insurance Company, Plaintiff in Error, prays this Honorable Court to examine and collect the errors, assigned, for citation and for a reversal of the judgment of the Supreme Court of Louisiana entered in the above entitled cause.

(Signed) HARRY H. HALL,
J. BLANC MONROE,
LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY OF NEW YORK, *By its Attorney.*

(Signed) Per J. G. PEPPER, *Ass't Gen. Ag't.*

(Endorsed:) No. 16,690. Supreme Court of Louisiana. Liverpool & London & Globe Insurance Company vs. Board of Assessors et al. Assignment of Errors. Filed Oct'r 13, 1908. (Signed) T. McC. Hyman, Clerk.

72 UNITED STATES OF AMERICA. *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Liverpool & London & Globe Insurance Company of New York plaintiff and the Board of Assessors for the Parish of Orleans, the City of New Orleans, the State Tax Collector for the First District of the City of New Orleans defendants wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of *the* clause of the Con-
73 stitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Liverpool & London & Globe Insurance Company of New York, plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13th day of October, in the year of our Lord one thousand nine hundred and eight.

[Seal illegible.]

H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice.

[Endorsed:] Original. No. 16690. Supreme Court of Louisiana. Liverpool & London & Globe Insurance Co. versus Board of Assessors et al. Writ of Error. Filed Oct'r 13, 1908. T. McC. Hyman, Clerk.

74 *Copy of Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Liverpool & London & Globe Insurance Company of New York plaintiff and the Board of Assessors for the Parish of Orleans, the City of New Orleans, the State Tax Collector for the First District of the City of New Orleans, Defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of *the* clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Liverpool & London & Globe Insurance Company of New York, Plaintiff as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you,
75 if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13th day of October, in the year of our Lord one thousand nine hundred and eight.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by

(Signed) JOS. A. BREAUX,
Chief Justice.

(Endorsed:) No. 16,690. Supreme Court of Louisiana. Liverpool & London & Globe Insurance Company versus (Writ of Error) Board of Assessors et als. Copy of Writ of Error lodged in the Clerk's Office of the Supreme Court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 13th day of October one thousand nine hundred — eight. (Signed) Harry H. Hall, J. Blanc Monroe, Attorneys of Plaintiff in Error. Filed Oct'r 13, 1908. (Signed) T. McC. Hyman, Clerk.

Bond for Writ of Error.

Know all men by these presents, That we Liverpool & London & Globe Insurance Company of New York, as principal, and George S. Kausler and J. G. Pepper, each to the extent of eight thousand ($8000) Dollars, as sureties, are held and firmly bound unto d'f'ts the Board of Assessors for the Parish of Orleans the City of
76 New Orleans, the State Tax Collector for the first District of
— City of New Orleans, in the full and just sum of Sixteen thousand ($16,000) Dollars to be paid to the said Board of Assessors for the Parish of Orleans the City of New Orleans, the State Tax Collector for the first district of the City of New Orleans their certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of October, in the year of our Lord, one thousand nine hundred eight.

Whereas, lately at a Session of the Supreme Court of the State of Louisiana, holding session in and for the State of Louisiana, in a suit depending in said Court, between Liverpool & London & Globe Insurance Company of New York plaintiff and the Board of Assessors for the Parish of Orleans the City of New Orleans and the State Tax Collector for the First District of the City of New Orleans, defendants, a judgment was rendered against the said Liverpool & London & Globe Insurance Company of New York and the said Liverpool & London & Globe Insurance Company of New York having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Board of Assessors for the Parish of Orleans, the City of New Orleans and the State Tax Collector for the first District of the City of New Orleans citing and admonishing them to be and appear before the Supreme Court of the United States to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Liverpool & London & Globe Insurance Company of New York shall prosecute its writ to effect, and answer all damages and costs

if it fail to make its plea good, then the above obligation
77 to be void, else to remain in full force and virtue.

LIVERPOOL & LONDON & GLOBE INSURANCE CO.,
Per J. G. PEPPER, *As-'t Ag't.* [SEAL.]
(Signed) J. G. PEPPER. [SEAL.]
(Signed) GEO. S. KAUSLER. [SEAL.]

Sealed and delivered in presence of
(Signed) F. J. DREYFOUS.
(Signed) J. BLANC MONROE.
(Signed) WALTER LEMANN.

Approved by
(Signed) JOS. A. BREAUX,
Chief Justice.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally appeared, George S. Kausler and J. G. Pepper who being severally duly sworn, deposes and says that they are the surety on the within bond, that they reside in the City of New Orleans and that each is worth the full sum of eight thousand Dollars, over and above all his debts and liabilities and property from execution.

(Signed) J. G. PEPPER.
(Signed) GEO. S. KAUSLER.

Subscribed and sworn before me this 13th day of October 1908.
[SEAL.] (Signed) F. J. DREYFOUS,
Not. Pub.

(Endorsed:) No. 16,690. Supreme Court of Louisiana. Liverpool & London & Globe Insurance Co. vs. (Bond) Board of Assessors, et als. Filed October 13, 1908. (Signed) T. McC. Hyman, Clerk.

78 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing Seventy-five pages, contain a full true and complete transcript of the proceedings had in the Civil District Court for the Parish of Orleans in a certain suit wherein Liverpool and London and Globe Insurance Company, was plaintiff and The Board of Assessors for the Pari-h of

Orleans, and Others were defendants, and also of all the proceedings had in this Honorable Court on the appeal taken by said plaintiff, which appeal is now on the files thereof under No. 16,690.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at the City of New Orleans, this 23rd day of October, Anno Domini, 1908, and in the One hundred and thirty-third year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN, Clerk.

79 *Certificate of the Chief Justice.*

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman, is Clerk of the Supreme Court of the State of Louisiana; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and Seal at the city of New Orleans, this the twenty-third day of October, A. D. one thousand nine hundred and eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

80 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to the Board of Assessors for the Parish of Orleans, through its proper officer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Liverpool & London & Globe Insurance Company of New York is plaintiff in error, and the Board of Assessors of the Parish of Orleans, the City of New Orleans, and the State Tax Collector for the First District of the City of New Orleans are defendants in error to show cause, if any there be, why the judgment rendered against the said Liverpool & London & Globe Insurance Company of New York as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of October in the year of our Lord one thousand nine hundred eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Per R. Supreme Court of the State of Louisiana. No. 16690. Liverpool & London & Globe Ins. Co. of N. Y. vs. Board of Assessors et als. Asses- Citation. Sheriff's return for return. Received Tuesday Oct. 13, 1908.

And on the 14th day of October 1908, I served a copy of the within Citation on The Board of Assessors for the Parish of Orleans defendant herein by personal service on C. Taylor Gauche its President.

Returned same day.

Sheriff's fees, $1.00.

C. M. GOSS,
Deputy Sheriff of Orleans Parish, State of Louisiana.

Christian M. Goss Deputy Civil Sheriff for the Parish of Orleans State of Louisiana being sworn deposeth and says that he made a personal service of a copy of the within Citation on C. Taylor Gauch President Board of Assessors of the City of New Orleans State of Louisiana.

C. M. GOSS.

Sworn to and subscribed before me at the City of New Orleans this 20th day of October, 1908.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Deputy Clerk Supreme Court of La.

81 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to the City of New Orleans through its proper officer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Liverpool & London & Globe Insurance Company of New York is plaintiff in error and the Board of Assessors of the Parish of Orleans, the City of New Orleans, and the State Tax Collector for the First District of the City of New Orleans are defendants in error to show cause, if any there be, why the judgment rendered against the said Liverpool & London & Globe Insurance Company of New York as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of October in the year of our Lord nineteen hundred eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Per R. Supreme Court of the State of Louisiana. No. 16390. Liverpool & London — Globe Ins. Co. of N. Y. vs. Board of Assessors et als. City. Citation. Sheriff's return. For Return. Received Tuesday Oct. 13, 1908.

And on the 14th day of October 1908, I served a copy of the within Citation on The City of New Orleans defendant herein by personal service on Hon. Martin Behrman its Mayor.

Returned same day.

Sheriff's fees $1.00.

C. M. GOSS,
Deputy Sheriff of Orleans Parish, State of Louisiana.

Christian M. Goss Deputy Civil Sheriff for the Parish of Orleans State of Louisiana being sworn deposeth and says that he made a personal service of a copy of the within Citation on Honorable Martin Behrman Mayor of the City of New Orleans State of Louisiana.

C. M. GOSS.

Sworn to and subscribed before me, at the City of New Orleans, this 20th day of October 1908.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Deputy Clerk Supreme Court of La.

82 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to the State Tax Collector for the First District of the City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The Liverpool & London & Globe Insurance Company of New York is plaintiff in error, and the Board of Assessors of the Parish of Orleans, the City of New Orleans, and the State Tax Collector of the First District of the City of New Orleans are defendants in error to show cause, if any there be, why the judgment rendered against the said Liverpool & London & Globe Insurance Company of New York as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 13th day of October in the year of our Lord one thousand nineteen hundred eight.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Per R. Supreme Court of the State of Louisiana. No. 16690. Liverpool & London & Globe Ins. Co. of N. Y. vs. Board of Assessors et als. Tax. Citation. Sheriff's return, For return. Received Tuesday Oct. 13, 1908.

And on the 14th day of October 1908, I served a copy of the within Citation on The State Tax Collector for the First District of the City of New Orleans defendant herein by personal service on John Fitzpatrick its state *state* Collector.

Returned same day.

Sheriff's fees $1.00.

C. M. GOSS,
Deputy Sheriff of Orleans Parish, State of Louisiana.

Christian M. Goss Deputy Civil Sheriff for the Parish of Orleans State of Louisiana being sworn deposeth and says that he made a personal service of a Copy of the within Citation on John Fitzpatrick State Tax Collector of the City of New Orleans State of Louisiana

C. M. GOSS.

Sworn to and subscribed before me, at the City of New Orleans, this 20th day of October, 1908.

[Seal Supreme Court of the State of Louisiana.]

JOHN A. KLOTZ,
Deputy Clerk Supreme Court of La.

Endorsed on cover: File No. 21,398. Louisiana supreme court. Term No. 282. Liverpool & London & Globe Insurance Company of New York, plaintiff in error, vs. The Board of Assessors for the Parish of Orleans, The City of New Orleans, and The State Tax Collector for the First District of the City of New Orleans. Filed November 4th, 1908. File No. 21,398.